

APPEAL NO. 021292
FILED JULY 1, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on May 2, 2002, the hearing officer resolved the three disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, that the claimant's average weekly wage (AWW) is \$763.46, and that the "[c]laimant's weekly earnings from October 20, 2001 through January 18, 2001 [*sic*], are indeterminable." The parties stipulated to the AWW amount. The claimant has filed a document which requests review "of the decision of the hearing officer" and which requests the Appeals Panel to reverse the hearing officer's decision and render a new decision that the claimant sustained a compensable injury on _____, and had disability from that date through the date of the hearing. Issues of compensable injury and disability were not before the hearing officer and we will treat the appeal as a request for review of the sufficiency of the evidence to support the hearing officer's determinations of the SIBs and amount of earnings issues. The respondent (carrier) urges the sufficiency of the evidence to support the hearing officer's determinations.

DECISION

Affirmed, as reformed.

The claimant testified that during the qualifying period, he could not return to his previous employment as the district sales manager of a newspaper because of his 25-pound lifting restriction; that he had two years of college education; that he became self-employed as the lead singer and business manager of a nine-piece rock band he had recently formed; that he averaged working approximately 43 hours per week in that enterprise; that the band grossed \$11, 891.00, and he paid out \$11,237.31 in salary and expenses; that he paid all his musicians and the booking agent more than himself; and that he netted \$653.69. On cross-examination, the claimant did not quarrel with the calculation that his earnings in the qualifying period amounted to \$1.17 per hour. He conceded not having looked for any other employment, to having applied for Social Security disability benefits, and to having received long-term disability benefits. As for his failure to produce his tax return, the claimant said he did not think it necessary, and he said he failed to complete various items of information and documentation on his Application for [SIBs] (TWCC-52) because he "was confused."

The requirements for entitlement to SIBs are set out in Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104 (Rule 130.104). The hearing officer found, among other things, that the claimant had not returned to work in a position which was relatively equal to his ability to work; that he did not conduct and document a job search effort; that his business records were incomplete, unverifiable, and incredulous; that he failed to make a good faith effort to obtain employment commensurate with his ability to work; and that he failed to prove that he earned less

than 80% of his AWW as a direct result of his impairment. The parties made no argument concerning the evidence in support of the issue of the amount of the claimant's earnings during the qualifying period. We are satisfied that the challenged determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). For a discussion of the quality of evidence of business expenses claimed to have reduced income from self-employment, see Texas Workers' Compensation Commission Appeal No. 982820, decided January 11, 1999. Finally, to correct an obvious typographical error, Conclusion of Law No. 5 to state that the claimant's weekly earnings from October 20, 2001 through January 18, 2002, are indeterminable.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge